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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Report of the Satellite Digital Audio
Radio Service Pioneer's Preference
Review Panel

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Report No.
SPB-67

To: The Commission

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COMMENTS OF PRIMOSPHERE LIMITED PARTNERSHIP

Primosphere Limited Partnership ("Primosphere"), by its attorneys, hereby submits its Comments on the Report of the Satellite Digital Audio Radio Service (SDARS) Pioneer's Preference Review Panel.

Primosphere supports the conclusion of the Panel that no preference should be awarded in the SDARS licensing proceeding. The findings of the Panel are consistent with the record and should form the basis of the Commission's ruling on the pending pioneer's preference requests.

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Moreover, both Primosphere and CD Radio have now withdrawn their pioneer's preference requests, and have urged the Commission to proceed immediately to adoption of licensing and service rules for SDARS and licensing of systems.¹

I. The Findings of the Panel Are Well Grounded and Provide Ample Support for a Finding that No Pioneer's Preference Should be Awarded.

The Pioneer's Preference Review Panel is to be commended for its thorough review of the origins of satellite digital radio as well as the record in this proceeding. This thorough review enabled the panel to reach the correct conclusion that no pioneer's preference should be awarded in this proceeding. Moreover, in reaching its conclusion regarding the pioneer's preference requests, the Panel appropriately applied the criteria provided them by the Commission. The Panel quoted the criteria provided by the Commission in the first page of its evaluation:

[A]n applicant must demonstrate:

1. "that it (or its predecessor in interest) has developed the capabilities or possibilities" of a new service or technology "or has brought them to a more advanced or effective state"...., AND
2. "the technical feasibility of its proposal, by summarizing its experimental results in its preference application, unless it instead submits an acceptable showing of technical feasibility...."²

¹ See Letter from Robert Briskman, President, CD Radio, Inc. to William Caton, Secretary, Federal Communications Commission, dated November 22, 1996 and Letter from Clifford Burnstein, Primosphere Limited Partnership, to William Caton, Secretary, Federal Communications Commission, dated November 27, 1996, submitted to the Commission on December 3, 1996.

² Report of the Satellite Digital Audio Radio Service Pioneer's Preference Review Panel ("Peer Review Panel Report"), Report No. SPB-67 (November 19, 1996) at 6.

The Panel provides a concise summary of technical innovations in BSS (Sound) that preceded the preference requests. As noted by the Panel, this summary demonstrates that:

[C]onsiderable work that has been done toward the development of BSS (Sound) and complementary terrestrial broadcasting at the microwave frequencies eventually allocated at WRC-92. *Very little of this work was accomplished by the applicants.*³

The Panel also considered the technical feasibility of the innovations claimed by the applicants and found these similarly unworthy of a preference grant.⁴

Based on consideration of these factors the Panel reached the following conclusion:

In summary, given the two criteria for pioneer's preference we were asked to focus upon, we find that none of the proposed DARS service designs meets both of these FCC criteria for a pioneer's preference award.⁵

This conclusion is firmly supported by the material evaluated by the Panel and in the record of this proceeding. The Panel's conclusion should therefore form the basis of a Commission finding that no preference should be awarded to any of the SDARS applicants.

³ Id. at 19 (emphasis provided).

⁴ See id. at 20-21 (discounting CD Radio's claims regarding signal processing and satellite diversity); id. at 21-22 (discounting DSBC's claims regarding antenna technology).

⁵ Id. at 20.

II. The Comments of the Peer Review Panel on “Seamless Coverage” Should Be Considered Only in the Context of their Findings and Should Not Be Utilized In Developing Technical Rules for SDARS.

The discussion in the Peer Review Panel’s Report regarding seamless coverage should be utilized only in the context of the pioneer preference proceeding and should not be considered a comment on the proposed technical rules for SDARS. The Report states that “[a]ny proposed system for [SDARS] needs to provide a local ‘seamless’ broadcast service within an urban or suburban area...”⁶ The Panel was not asked for its view on the performance standards for satellite radio broadcasting; it was asked to provide a recommendation regarding the pending pioneer’s preference requests.

The issue of service availability is a subject of the pending SDARS NPRM and was fully briefed by the commenting parties.⁷ The period for submitting comments on this subject has already passed and any additional comments must be excluded from consideration by the Commission. The Panel’s conclusions regarding service availability are untimely with regard to the rulemaking and should be disregarded by the Commission as it finalizes its service rules for SDARS.

⁶ Id. at 19.

⁷ See In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 Mhz Frequency Band, 11 FCC Rcd 1 (1995) at ¶¶ 43-46, 55-56 (requesting comment on rules regarding service area, service link margin and terrestrial gap fillers).

III. Conclusion.

Based on the recommendation of the Panel, and the record before it, the Commission should conclude that no pioneer's preference should be awarded in this proceeding.

Moreover, the Commission, now that the Peer Review Panel has completed its work, should move expeditiously to adopt licensing and service rules for satellite digital audio radio and license systems so that the benefits of this service can be made available to the American public.

Respectfully submitted,

PRIMOSPHERE LIMITED PARTNERSHIP

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December 4, 1996

CERTIFICATE OF SERVICE

I, Nellie Martinez, a secretary in the law firm of Arter & Hadden, hereby certify that on this day, December 3, 1996, a copy of the foregoing "COMMENTS OF PRIMOSPHERE LIMITED PARTNERSHIP" was served on the following persons by first class U.S. mail, postage prepaid:

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